UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
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In Re:

Lourdes M. Numme,

Debtor.
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Hearing Date: March __, 2017
Hearing Time: 10:00 am

Chapter 13

Case No. 15-22596-rdd

APPLICATION BY DEBTOR'S COUNSEL FOR COMPENSATION FOR ADDITIONAL NON-BASE LEGAL FEES AND REIMBURSEMENT OF EXPENSES

TO THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE:

Natasha Meruelo, Esq., an attorney duly admitted to practice law in the State of New York respectfully moves the Court for approval of additional non-base legal fees of **$1,939.10**, reimbursement for out-of-pocket expenses in the amount of **$49.39** to be paid as an administrative expense upon either confirmation, conversion or dismissal and in connection herewith declares under penalty of perjury as follows:

1. This Court has jurisdiction over this application pursuant to 28 U.S.C. §§ 1334 and 157. Venue in this Court is proper pursuant to 28 U.S.C. § 1409. This application is a core proceeding within the meaning of 28 U.S.C. § 157.

2. I am the attorney for Lourdes M. Numme (the "Debtor") and as such am fully familiar with all the facts and circumstances herein.

3. This application is submitted for the purposes of 1) securing compensation for additional non-base legal services rendered or to be rendered from February 18, 2017 through April 26, 2017, in the amount of **$1,939.10** and 2) reimbursement for out-of-pocket expenses in the amount of **$49.39,** pursuant to Bankruptcy Rule 2016 and Section 503 of the Code.

BACKGROUND

4. On April 23, 2015, the Debtor entered into a written agreement with my office to represent her in a Chapter 13 bankruptcy case wherein she consented to pay $5,000.00 for certain base legal services and to pay for additional non-base legal services at the agreed upon hourly rate of $400.00 per hour for the attorney and $150 per hour for legal assistants ("Retainer Agreement") (*see* **Exhibit B**).

6. I commenced the Debtor's case (the "Case") on April 29, 2015, by filing a voluntary petition for relief under Chapter 13, Title 11 of the United States Bankruptcy Code (the "Code").

7. The Debtor's Chapter 13 Plan was confirmed by Court Order dated July 14, 2015 and this Fee Application concerns work performed by the Debtor's counsel subsequent to that confirmation.

8. The additional work for which this Application seeks compensation stems from an unanticipated change in the Debtor's financial circumstances and a Motion to Dismiss this Case filed by the Chapter 13 Trustee. Specifically, as a result of losing her job in January 2016 and being unemployed for almost one year, the Debtor fell behind on her confirmed Chapter 13 Plan which resulted in the Trustee moving to dismiss her case (the "MTD"). Since that time, my office has assisted the Debtor with resolving the MTD and filing a motion to modify her confirmed plan. This legal work was necessary to resolve the MTD and is necessary to keep the Debtor in a feasible Chapter 13 Plan which will enable her to pay creditor claims, as required by the Bankruptcy Code and prevent the Debtor's case from being dismissed, which would be to the detriment of both the Debtor and the Bankruptcy Estate.

SERVICES RENDERED

7. Since the filing of the MTD My office has performed legal services that were necessary to assist the Debtor in avoiding dismissal of her case and defending the MTD and propose a new confirmable amended plan. Services included: 1) workout between the Trustee's Office and the Debtor to resolve the MTD; 2) subsequent amendments to Schedules I and J and the Chapter 13 Plan to reflect the Debtor's change in circumstances; and 3) moving to modify her confirmed plan to allow the Debtor to successfully remain in Chapter 13 and complete a reorganization plan to address her debts.

8. The legal services which resulted in the additional work set forth in the time records attached hereto as **Exhibit A**, were in addition to the base services contemplated by the Chapter 13 Retainer Agreement, benefit the Debtor and her estate, and were necessary to confirm a successful amended reorganization plan.

FEE REQUEST

9. Between February 18, 2017 through April 26, 2017, my office will have devoted approximately **7.294 hours** towards work addressing the MTD and Motion to Modify the Debtor's Confirmed Plan, as itemized in **Exhibit A**. I also incurred or expect to incur expenses for the non-base and base services provided in the estimated sum of **$49.39,** which are also itemized in **Exhibit A**.

10. The Debtor has deposited $500 with my office towards services rendered or to be rendered in connection with the MTD and Motion to Modify her Confirmed

Plan, and for reimbursement of expenses requested in this Application. This amount is currently being held in my attorney trust account.

11. Consideration of the factors set forth in Section 330(a)(3)(A) of the Code shows that the requested fee is appropriate. The services provided were necessary to the successful administration of the case to date. There was no duplication of services. A review of **Exhibit A** shows that the amount of time spent was reasonable, commensurate with the complexity, importance, and nature of the problems, tasks and issues addressed. The rates charged are similar to or lower than those charged by most attorneys of comparable skill and experience both in bankruptcy and non-bankruptcy matters, and are equal to or lower than the rates charged to other clients of the undersigned law firm.

12. My experience indicates that all time actually devoted by my office with respect to a client's affairs is not always entered in my time records. Occasionally, I do not record all the time spent in legal matters, such as short conferences, miscellaneous telephone calls and emails. For these reasons, the Court should regard the aggregate of recorded hours reported in the time records attached as part of **Exhibit A** annexed hereto to be a conservative compilation of the time actually expended.

14. Courts frequently look to the "lodestar" formula in assessing attorneys' fees. Under this approach, courts consider the number of hours of service reasonably devoted to the case, multiplied by the attorneys' reasonable rates. This sum may be adjusted to reflect the characteristics of the particular case, and the reputation of the attorney. *See* e.g., *Laffey v. Northwest Airlines, Inc*., 572 F. Supp. 354, 361 (D. D.C. 1983), *aff'd. in part rev'd in part*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021, 105 S. Ct. 3488 (1985). Many courts frequently consider the specific lodestar factors set forth in *Johnson v. Georgia Highway Express, Inc*., 488 F.2d 714 (5th Cir. 1974) and applied in bankruptcy cases in *In re First Colonial Corporation of America*, 544 F.2d 1291, 1298-99 (5th Cir.), *cert. denied*, 431 U.S. 904 (1977). The Fourth Circuit Court of Appeals adopted these tests in *Barber v. Kimbrells, Inc.,* 577 F.2d 216, 226 (4th Cir.), *cert. denied*, 439 U.S. 934 (1978). In *Anderson v. Morris*, 658 F.2d 246, 249 (4th Cir. 1981), the Fourth Circuit held that the District Court should consider the lodestar approach, which encompasses the *Johnson* factors (a) and (e) as set forth below, and then adjust the fee on the basis of the remaining *Johnson* factors. The following are the *Johnson* factors:

(a) the time and labor required;

(b) the novelty and difficulty of the questions;

(c) the skill requisite to perform the legal service properly;

(d) the preclusion of other employment by the attorney due to acceptance of the case;

(e) the customary fee;

(f) whether the fee is fixed or contingent;

(g) time limitations imposed by the client or the circumstances;

(h) the amount involved and the results obtained;

(i) the experience, reputation, and ability of the attorneys;

(j) the "undesirability" of the case;

(k) the nature and length of the professional relationship with the client; and

(l) awards in similar cases.

Johnson, 488 F.2d at 717-719; *Barber* 577 F.2d at 226 n.28; *Anderson*, 658 F.2d at 248 n.2

15. I submit the following lodestar analysis in support of my request for allowance of fees and disbursements:

(a) **The time and labor required**. The amount of time required to represent the Debtor in this case was appropriate and also commensurate with the necessities of the case.

(b) **Novelty and difficulty of the questions**. This Chapter 13 case has presented time sensitive and complex issues, including the work described herein in order to avoid dismissal of Debtor's case, and creating a successful amended plan of reorganization which the Debtor will be able to complete in light of the change in her financial circumstances.

(c) **The skill requisite to perform the legal service properly**. Because of the experience of Debtor's counsel in handling matters of this nature, counsel has efficiently and adeptly exercised the skill requisite to perform these services properly.

(d) **The preclusion of other employment by the firm due to acceptance of this case**. This case has not conflicted Debtor's counsel out of other matters, but has taken up a significant portion of the limited time available to counsel, diverting counsel's attention from other matters in which she otherwise might have been involved in order to devote herself to the competent representation of the Debtor.

(e) **The customary fee for similar work**. I submit that the fees sought herein are warranted, and are generally less than or equal to competitor fees in the local legal market for attorneys with comparable skill and experience with comparable practices.

(f) **Whether the fee is fixed or contingent**. The fees are sought based on a fixed hourly rate, but pursuant to the Code, all fees sought by professionals retained by the Debtor are subject to approval of this Court, and thus are, to an extent, contingent.

(g) **Time limitations imposed by the client or circumstances**. Because of the nature of this Bankruptcy proceeding, I have been compelled to render legal services, in some instances, under time constraints.

(h) **The amounts involved and the results obtained**. Thus far, counsel has taken steps to move this case along for the benefit of all legitimate creditors and parties in interest, with positive results.

(i) **Experience, reputation and ability of the attorney**. I have practiced law since 2008 in New York State and represented consumer debtors in bankruptcy since 2009 and accordingly, my hourly rate is commensurate with the rates charged by comparable bankruptcy practitioners.

(j) **The "undesirability" of the case**. This case presented many complex issues and although not "undesirable" per se, it may not have been accepted by other practitioners due to the complexity of issues presented and which had to be resolved.

(k) **The nature and length of the firm's professional relationship with the client**. I was retained by the Debtor for a Chapter 13 case on April 23, 2015.

WHEREFORE, Natasha Meruelo, Esq. respectfully prays of the Court as follows:

16. That the Court enter an Order approving payment of additional compensation as an administrative expense in the amount of **$1,939.10** for non-base legal fees and expenses of **$49.39.**

17. That the Court permit the aforementioned amounts to be immediately paid in part from the amount held in applicant's trust account ($500.00), with the balance to be paid by the Trustee as set forth above; and

18. That applicant have such other and further relief as the Court may deem just and proper.

Dated: March 3, 2017
White Plains, NY

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By: Natasha Meruelo, Esq.
Attorney for the Debtor
445 Hamilton Avenue, Suite 1102
White Plains, NY 10601
(T) 914-517-7565
(F) 914-613-0875

DECLARATION

I, Natasha Meruelo, a member of the bar of this Court, declare under penalty of perjury that the statements in the foregoing Application and attached statements of services rendered are true and correct, and that the items listed on the attached statements were services actually and necessarily rendered and expenses actually and necessarily incurred. No understanding or agreement exists between this law firm and any other person for a sharing of compensation received or to be received in connection with this case. No previous application for the relief requested herein has been submitted to this or any other court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this March 3, 2017, in White Plains, New York.

By: Natasha Meruelo, Esq.